IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1434 OF 2007
WITH
CRIMINAL WRIT PETITION NO. 1435 OF 2007

M/s. Ramniranjan Kedia Tourism
Services Pvt. Ltd. and ors. ..Petitioners

Vs.

The State of Maharashtra and ors. ..Respondents

Mr. V.V. Khemka for petitioners.
Mr. D.P. Adsule, APP for State.
Mr. F. Sayyed with Mr. S. Chandasana i/by M.K. Ambalal and Co. for respondent no.3.

CORAM: B.H. MARLAPALLE, J.

Date : August 07, 2007.

P.C.:

1. Both these petitions raise a common grievance and, therefore, they are being disposed off by a common order.

2. Heard the learned counsel for the respective parties.

3. The present petitioners are the accused in two separate complaints filed by M/s. Birla Global Finance Limited i.e. C.C. No. 347/SS/2006 and C.C. No.348/SS/2006. The complaints have been filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. While the trial in the complaints had commenced, the complainant made an applications for substitution of its former name by the new name i.e. "M/s. Aditya Birla Nuvo Ltd." and the said applications filed in both the complaints came to be allowed by the learned Metropolitan Magistrate, 44th Court, Andheri, Mumbai. These orders were challenged in Criminal Revision Application Nos.50/07 and 51/07 and the said revisions have been dismissed by the learned Additional Sessions Judge on 21/3/2007.

3. It also appears that on 25/8/2006 the present petitioners had filed an application under Section 395(2) of Cr.P.C. in each of the complaints stating that important questions of law had arisen. This application was rejected by the learned Magistrate on 6/1/2007 by observing that there was no propriety of

making such application by the accused under Section 395(2) of the Code. The learned Magistrate had further observed that the principle laid down by the Supreme Court in the case of Bombay Offshore Services Ltd. vs. Shankar Narayan & Ors. [2000 SCC (Cri) 1385] was squarely applicable to the circumstances of the complaints. Being aggrieved by the said order the petitioners had approached this court in Criminal Writ Petiton No. 169 of 2007 and the same was dismissed without expressing any opinion on the questions law which were raised by the petitioners.

4. So far as the present petitions are concerned, undoubtedly, the examination-in-chief of the complainant was partly concluded and now the learned counsel states that even other witnesses on behalf of the complainant were also examined. This court passed an order on 27/1/2006 regarding the amalgamation of the company by name M/s. Biral Global Finance Ltd. with M/s. Aditya Birla Nuvo Ltd. on 30/6/2006 and pursuant to the said amalgamation the new company i.e. M/s. Aditya Biral Nuvo Ltd. passed a resolution as under:-

"the Committee hereby approves and ratifies all the existing power of attonrey(s) as per the list placed at the meeting issued by the FGFL in favour of whosoever on the condition that the same will be effective either till the expiry date mentioned in the respective power of attorney or till one year from the date of effectiveness of the scheme i.e. 30/6/2006 whichever is earlier."

. It was further resolved that,

"All the acts, deeds, matters, transactions, resolutions pertaining to the business of BGFL done/passed by the Board of Directors of BGFL or any committee of Board from time to time be and are hereby approved, adopted and ratified by the Company and will be effective ipso facto."

5. Whether the new entity i.e. M/s. Aditya

Biral Nuvo Ltd. is in fact and in law a successor of M/s. Birla Global Finance Ltd. is a matter which can be contested by the accused by leading evidence and allowing the applications filed by the complainant for change of name by itself would not indicate that the accused are prevented from adducing evidence to the contrary. Hence, the concurrent view take by both the courts below does not call for any interference in the impugned order.

6. The petitions are rejected summarily.

(B.H. Marlapalle,J.)